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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/773,508

02/05/2004

Richard S. Ginn

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EXAMINER

SCHILLINGER, ANN M

ART UNIT

PAPER NUMBER

3774

MAIL DATE

DELIVERY MODE

10/31/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/773,508

Applicant(s)

GINN, RICHARD S.

Examiner

Ann Schillinger

Art Unit

3774

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 August 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 2 and 4-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 10-15 are rejected under 35 U.S.C. 102(e) as being anticipated by Keith et al. (U.S. Pat. No. 6,805,695). Keith et al. discloses the following of claim 1: a method for treating a ruptured or degenerated spinal disc of a patient, comprising: accessing an area adjacent an exterior of a spinal disc disposed between adjacent vertebrae; and wrapping a band (600) of material around the disc to stabilize the disc in a desired position relative to surrounding anatomy wherein the accessing step comprises accessing an anterior region of the disc (col. 5, lines 7-19), and wherein the wrapping step comprises: extending a distal end of an elongate member (710) along a first lateral region of the disc around a posterior region of the disc to an opposite second lateral region of the disc; connecting a first end of the band to the distal end of the elongate member; pulling the elongate member back around the posterior region of the disc, thereby directing the first end of the band around the posterior region of the disc; and securing at least one of the first end and a second end of the band to another portion of the band, thereby securing the band around the disc (col. 25, line 9 through col. 26, line 46). Please also see Figures 18A-18L.

Keith et al. discloses the limitations of claims 10 and 11 in col. 9, lines 26-49.

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Keith et al. discloses the limitations of claims 12-14 in col. 10, lines 20-63.

Keith et al. discloses claim 15 as follows: the method of claim 1, further comprising inserting a tubular guide member (410) around a portion of the exterior of the disc, and wherein the wrapping step comprises directing the band through the guide member to facilitate wrapping the band around a posterior region of the disc (col. 25, line 9 through col. 26, line 46).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. in view of Schneiderman (U.S. Pub. No. 2003/0032965). Keith et al. does not disclose the use of a fork member to place traction of the vertebrae and make it easier to insert the band.

Schneiderman teaches such a method, described in claims 5 and 6 as follows: the method of claim 4, wherein the adjusting step comprises: engaging at least one of the vertebrae between tines (106, 108, 116) of a fork member (100); and manipulating the tines between the vertebrae to increase a space between the vertebrae; and the method of claim 4, wherein the adjusting step comprises subjecting the patient to traction (paragraph 0043). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use this fork member if needed to more easily insert the band into the vertebral region.

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Claims 7-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. in view of Belef et al. (U.S. Pub. No. 2002/0147497). Keith et al. discloses the invention substantially as claimed, however, Keith et al. does not disclose the use of extra-cellular matrix material. Belef et al. teaches the use of this material in paragraph 0013 for the purpose of promoting bone growth. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use extra-cellular matrix material as the fill material of the band to promote bone growth and healing in the patient.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Keith et al. In the embodiment used to disclose claims 1, 2, and 10-15, Keith et al. does not disclose the use of opposite hand tubular guide member. However, in an alternative embodiment described in Figures 11A-11D, and in col. 14, line 64 through col. 15, line 49, Keith et al. teaches the use of opposite hand tubular guide members their associated method. The motivation for using the multiple guide members is to facilitate the insertion of the band. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to use the opposite-hand tubular guide members in order to more easily insert the band to its desired location.

Response to Arguments

In view of the Terminal Disclaimer filed on 8/15/2007, the Double Patenting rejection made in the office action dated 7/25/2007 is withdrawn.

After an updated search and consideration the above cited prior art was found to also read on the current claim limitations.

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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ann Schillinger whose telephone number is (571) 272-6652. The examiner can normally be reached on Mon. thru Fri. 9 a.m. to 4 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Ann Schillinger
October 25, 2007


CORRINE McDERMOTT
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700